

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MOLLY ALLEN CAMPBELL, ¹	§
	§ No. 656, 2010
Respondent Below-	§
Appellant,	§
	§ Court Below—Family Court
v.	§ of the State of Delaware
	§ in and for New Castle County
CHARLES B. ISAAC,	§ File No. CS09-02262
	§ Petition No. 09-20108
Petitioner Below-	§
Appellee.	§

Submitted: May 27, 2011
Decided: July 14, 2011

Before **HOLLAND, BERGER** and **JACOBS**, Justices

ORDER

This 14th day of July 2011, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The respondent-appellant, Molly Allen Campbell (“Mother”), filed an appeal from the Family Court’s October 5, 2010 custody and visitation order establishing joint legal custody of the parties’ minor child, primary placement with Mother, and overnight visitation with petitioner-appellee Charles B. Isaac (“Father”). We find no merit to the appeal. Accordingly, we affirm.

¹ The Court *sua sponte* assigned pseudonyms to the parties by Order dated October 14, 2010. Supr. Ct. R. 7(d). We hereby also assign a pseudonym to the parties’ minor child.

(2) The record reflects that Mother and Father are the biological parents of Annie, born on June 15, 2009. When Annie was born, Mother and Father, who were not married, had separated, with Mother living in Delaware and Father living in Maryland. On June 16, 2009, Father filed a petition for custody in the Family Court alleging that Mother and Mother's family had not allowed him to see his newborn daughter.

(3) On August 24, 2009, a hearing was held before a Family Court mediator, who established an interim contact schedule for Father consisting of visitation every Saturday, Monday and Wednesday from 5:00 p.m. to 7:30 p.m. On the third week, visitation was to be increased on Saturday from 2:00 p.m. to 7:30 p.m. Exchanges were to take place at the Seaford Police Department, Seaford, Delaware.

(4) On September 28, 2010, a hearing was held in the Family Court on Father's custody petition. Mother and Father both appeared. Mother was represented by counsel, while Father appeared *pro se*. In addition to the parties' testimony, the Family Court also heard the testimony of Father's sister, Mother's maternal grandmother, maternal grandmother's boyfriend, Mother's maternal aunt and two of Mother's friends. The parties agreed to share joint legal custody of Annie, with Mother having primary physical

placement. The only issue in dispute was whether Father should be permitted to have overnight visitation.

(5) The testimony presented at the hearing established the following. Father owns and resides in a mobile home just west of Seaford in the State of Maryland. The home has three bedrooms, one of which is reserved for Annie. Father lives with his two sons, age 4 and 8. Father obtained sole custody of his sons following his divorce. The boys' mother is currently incarcerated. Father is self-employed in the construction field. Although Father's hours are flexible, he has arranged for back-up care for Annie and his sons with his mother, in case of an emergency. Father's sister and Father's brother, who has one year-old twins, also would spend time with Annie. Father is current in his child support. Father has no criminal record in Delaware, although he acknowledged an incident with Mother in which he grabbed her arm, causing a bruise. Father submitted his sons' report cards for 2009-2010, which reflected that both boys have good grades and are courteous and responsible.

(6) In 2008, Father was fired when he tested positive for drugs. He attended a drug program at Peninsula Addiction Services during April, May and June of 2008. He successfully completed the program, but did not return for follow-up. Father testified that he has not used illegal drugs since

that time. Father's sister corroborated his testimony. One of Mother's friends testified that she had concerns about the cleanliness of Father's home and stated that she observed Father using marijuana sometime near the end of 2008 or the beginning of 2009. While she suggested that there was drug use by Father during this time, no concrete evidence of that was presented. Another of Mother's friends testified that Mother has been married to her new husband for about 6 months. According to her, Mother's husband treats Annie like his own child.

(7) Mother's testimony reflects that her main concern with Father having overnight visitation with Annie is his history of drug use. While Mother testified that Father was still smoking marijuana in October 2009 when they separated, she acknowledged that he never did so in front of his two boys. Also, while Mother stated that Father smokes cigarettes, there was no corroborating evidence that he does so while in the presence of his children. Mother's maternal grandmother, who works for the Department of Correction as a probation and parole supervisor, testified that Father displayed characteristics of people who abuse drugs---namely, controlling behavior, red eyes, nervousness and excessive cigarette smoking.

(8) In its custody and visitation order, the Family Court permitted Father visitation with Annie according to the following schedule: Every

other week-end, beginning at 6:00 p.m. on Friday through 6:00 p.m. on Sunday and 2 evenings each week, for a minimum of 3 hours each evening. Once Annie turns 18 months of age, the Family Court permitted two overnights per week to be agreed upon by the parties, plus every other week-end from 6:00 on Friday through Monday morning. The Family Court expressly prohibited Father from using illegal drugs or alcohol during visitation and prohibited both parents from smoking in Annie's presence. The Family Court noted that, while Father acknowledged using marijuana in the past and while there was testimony suggesting that it continued beyond his participation in a drug program, there was no evidence that Father continues to use marijuana at this time. Neither is there any evidence that Father's two sons are not being raised properly.

(9) In this appeal, Mother claims that the Family Court erred a) by failing to consider the requirements of Del. Code Ann. tit. 13, §§722 and 728 in deciding the issue of Father's visitation with Annie; and b) by issuing a visitation order that amounted to shared placement and that was not the product of a logical deductive process.

(10) When determining issues of custody and visitation, the Family Court must address the requirements of Del. Code Ann. tit. 13, §§722 and 728. Section 722(a) provides that custody and residential arrangements must

be in accordance with the best interests of the child, considering all relevant factors including: a) the wishes of the parents; b) the wishes of the child; c) the interaction of the child with his parents, relatives and any other residents of the household; d) the child's adjustment to his home, school and community; e) the mental and physical health of all individuals involved; f) past and present compliance of the parents with their rights and responsibilities to their child; and g) evidence of domestic violence. Under §728(a), the Family Court must determine custody and visitation arrangements consistent with the best interests and maturity of the child and in a manner designed to encourage frequent and meaningful contact with both parents.

(11) Our standard of review of a decision of the Family Court extends to a review of the facts and the law, as well as the inferences and deductions made by the Family Court judge.² This Court reviews the sufficiency of the evidence in order to test the propriety of the Family Court's conclusions.³ The Family Court's findings of fact will not be disturbed on appeal unless they are determined to be clearly erroneous.⁴ We will not substitute our opinion for the inferences and deductions of the

² *Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983).

³ *Wife (J.F.V.) v. Husband (O.W.V., Jr.)*, 402 A.2d 1202, 1204 (Del. 1979).

⁴ *Mundy v. Devon*, 906 A.2d 750, 752 (Del. 2006).

Family Court judge if those inferences and deductions are supported by the record.⁵

(12) We have carefully reviewed the record in this case, including the transcript of the Family Court's September 28, 2010 custody hearing. While Mother contends that the Family Court did not strictly follow the requirements of §722, we note that the requirements involving the wishes of the child, the interactions of the child with its parents and relatives and the adjustment of the child to its home and community cannot be strictly followed when the child is an infant. We conclude that the Family Court's analysis under §722 was appropriate under the circumstances presented in this case. While Mother cites Father's continued drug use as a basis for forbidding overnight visitation, we note that the Family Court questioned Father closely on that subject and found him to be credible. We will not substitute our opinion for that of the Family Court in a matter of credibility. While Mother contends that the Family Court's analysis is faulty because it had no information concerning Father's criminal record in Maryland, we conclude that the Family Court made the appropriate inquiry into Father's criminal record and properly weighed this factor with the information it had. In sum, we conclude that the Family Court committed no error or abuse of

⁵ *Wife (J.F.V.) v. Husband (O.W.V., Jr.)*, 402 A.2d at 1204.

discretion and that its decision was fully supported by the evidence adduced at the hearing and was the product of a logical deductive process. As such, it must be affirmed.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice